IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8768 of 1999

to

SPECIAL CIVIL APPLICATION No 8780 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMENDRA MOHAN

Versus

CHAIRMAN CUM MANAGING DIRECTOR

Appearance:

1. Special Civil Applications Nos. 8768 to 8780 of 1999

MR JV BHAIRAVIA for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1-2

MR RAJNI H MEHTA for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/03/2004

ORAL COMMON JUDGEMENT

In all these petitions, common questions of fact as well as law are involved and hence, they are heard together and now they are being disposed of by this common judgment.

1.1. The controversy involved in these petitions is whether the Oil and Natural Gas Corporation Limited (hereinafter referred to as "O.N.G.C.") can insist upon the deduction to be made from the salary of its officers who do not wish to become members of the scheme known as O.N.G.C. Self Contributory Post Retirement and Death in Service Benefit Scheme (in short "PRBS") when they have exercised option in favour of the Employees Pension Scheme, 1995 ("EPS" for short) under Clause-4 of PRBS.

1.2. All these petitioners are officers of the O.N.G.C. and they are members of the Association of Scientific & Technical Officers ("ASTO" for short). O.N.G.C. has introduced the aforesaid scheme i.e. PRBS, with effect from 1st April, 1990. Clause (4) of the said scheme states that:-

"The Scheme is optional for Existing Executives as on 1st April, 1990 and compulsory for Executives joining regular service in the Corporation as new entrants on or after 1st April, 1990 who have ten or more years of service."

1.2. All the petitioners are Existing Executives as on 1st April, 1990. In the year 1995, the Government of India introduced a scheme know as EPS. It came into force with effect from 16th November, 1995. It was made applicable to employees of all factories and establishments to which Employees' Provident Fund and Miscellaneous Provision Act, 1952 ("the Act" for short) was applied, subject to certain exceptions. It appears that with the introduction of the EPS, O.N.G.C. made an application under Section 39 of the EPS, seeking exemption from the operation of the pension scheme. However, the application was rejected by the Government of India. The EPS thereafter, became the subject matter of challenge in many petitions filed by different industrial organization like the O.N.G.C. before the Apex Court. The Apex Court, upheld the validity of the EPS. However, in paragraph 36, vis-a-vis O.N.G.C., the Apex Court had observed as under :-

"36. Writ Petition No.490 of 1999 if filed by

the management of O.N.G.C. Limited. The management adopted its own scheme called "Post Retirement and Death in Service Benefit Scheme" and sought exemption from Employees' Pension Scheme, 1995. The exemption has been rejected by the Government. The management has prayed for exemption from operation of Employees' Pension Scheme, 1995."

In paragraph 37 again it has been stated as under:-

"37. If the establishments which have their own Pension Schemes apply to the concerned authorities, the concerned authorities shall examine the same in light of what we have stated above."

1.3. In view of this direction, O.N.G.C. has made a fresh application to the concerned authorities under Section 39 seeking exemption from the operation of the Employees' Pension Scheme. The said application is still pending and no decision has been taken thereof.

2. The grievance is that despite the fact that they do not wish to join the PRBS and they have exercised their option against it, by filing necessary form, which is know as PROFORMA PRBS-I, O.N.G.C. has started making deduction from the salary for PRBS scheme. The grievance of the petitioners is that when they have not opted for the scheme, it cannot be made applicable with retrospective effect and no such deductions can be made from their salary.

2.1. As against that, the say of the O.N.G.C. is that the viability of the scheme came under consideration before the High Court of Bombay in the petition filed by some MRBC members of PRBS. In the said petition, ultimately, Memorandum of Understanding was arrived at amongst the Management of ASTO (CWC) and ASTO (MRBC) and the authorized representative of the petitioners of writ petition No. 1718 of 1996. It was agreed upon by the representatives of the aforesaid parties as under:-

(i) The Scheme shall be compulsory for all the Employees' Pension Scheme, 1995 i.e. the date from which the Employees' Pension Scheme, 1995 has been notified by the Government of India to facilitate grant of exemption to O.N.G.C. from the said EPS-1995, IF OTHERWISE ELIGIBLE TO BECOME THE MEMBER OF PRBS."

There were other terms which are not relevant for this petition.

3.1. In view of the said Memorandum of Understanding dated 3rd February, 1998, the High Court of Judicature at Bombay, permitted withdrawal of the petitions and disposed of them accordingly.

4. In the present case, the petitioners made representation against the deduction that was made from their salary. It was addressed to the Director (Personnel) of the O.N.G.C. Reply to it was given under the signature of its General Manager, (P&A) by communication captioned "note" dated 18th January, 1999. In the said communication, it was stated that in view of the Circular dated 4th September, 1998, the Executives who were not the members of the PRBS earlier to 16th November, 1995, have been compulsorily made members of the PRBS with effect from 16th November, 1995 and hence deductions were made from their salary. It may be noted here that the deductions have been made with effect from 1995 and not prior to that. Circular dated 4th September, 1998, is annexed to this petition. The said Circular deals with PRBS regarding recovery of the additional contribution for the periods 1995-96, 1996-97, 1997-98 and 1998-99. The contribution was to be recovered from the members existing prior to 16th November, 1995. The said Circular was only in respect of recovery of the additional contribution from those members who were existing as such prior to 16th November, 1995. Admittedly, the petitioners who had exercised option against PRBS were not members of the said scheme. The reason therefore, given in the note dated 18th January, 1999 in response to the petitioners representation does not seem to proper. Be that as it may, it appears that the petitioners are now sought to be treated as having become members of PRBS and the directions have been made not only of the PRBS but also of the additional amount, as per the Memorandum of Understanding reached before the Bombay High Court. In short, the petitioners have been now treated to be members of the PRBS by virtue of clause (i) of the Memorandum of Understanding, which reads as under:

(i) The Scheme shall be compulsory for all the Employees' Pension Scheme, 1995 i.e. the date from which the Employees' Pension Scheme, 1995 has been notified by the Government of India to facilitate grant of exemption to O.N.G.C. from the said EPS-1995, IF OTHERWISE ELIGIBLE TO

BECOME THE MEMBER OF PRBS."

4. The question that may arise for consideration is whether by virtue of the aforesaid clause of Memorandum of Understanding, the petitioners stand covered under the scheme automatically. It is true that the petition before the Bombay High Court being writ petition No. 1718 of 1996 under Article 226 of the Constitution of India was filed by some member - officers of MRBC, Mumbai namely Shri AAK Sundaram and 184 others against O.N.G.C. and others, primarily challenging the financial viability of the scheme. In the said proceedings, ultimately, at the instance of the Bombay High Court, Association came into picture and they worked out Memorandum of Understanding referred to above. Thus, it can be seen that prayer made before the Bombay High Court was with regard to the viability of the scheme. Further, it clearly appears that the present petitioners were never the party before the Bombay High Court. It is also not known whether their sense was taken by the Association when the terms of Memorandum of Understanding were being negotiated. The petitioners had exercised their option against the PRBS much earlier to the filing of the petitions before the Bombay High Court, that was in the year 1990. It was done in accordance with the Clause-4 of the PRBS, because the petitioners were Existing Executives as on 1st April, 1990. The Central Government Scheme i.e. EPS was introduced in the year 1995. It was, therefore, compulsory for all the employees of the industrial enterprises such as O.N.G.C. to become member of such scheme. With the Memorandum of Understanding, which was reached before the Bombay High Court, it was thought it fit to introduce amendment in the PRBS by making the said scheme compulsory for all the Executives with effect from 16th November, 1995. The Circular as can be seen is dated 18th June, 1998, meaning thereby, that the amendment was brought in the scheme with retrospective effect i.e. dating back to 16th November, 1995. It may be noted here, that at that point of time, unamended scheme of PRBS was effective and the option that was given in Clause-4 of the said scheme was duly exercised by the petitioners way back in the year 1990. It appears that with the introduction of EPS, it became compulsory for the petitioners either to become member of PRBS or EPS. It is contended by Mr. Bhairavia learned advocate appearing for the petitioners that with the introduction of the EPS, whatever the contribution that was made under the CPF automatically merged into EPS and the petitioners became members of the EPS. However, he has not been able to substantiate this contention by placing any material on the record of this petition. Mr.

R.H. Mehta, learned advocate appearing for the O.N.G.C. has however, made the position clear by stating that CPF has nothing to do with EPS and at present the deductions from the salary of the employees of the O.N.G.C. are being made only on account of PRBS, no deduction is being made for EPS. This position will continue till the question regarding grant of exemption under Section 39 of EPS is finally decided.

4.1. In the aforesaid factual scenario, the question that is required to be decided is whether O.N.G.C. can amend the scheme with retrospective effect so as to make it compulsory for employees who have already exercised their option. Circular dated 18th June, 1998, shows that amendments have been introduced in the scheme. However, there is no clause contained in the said Circular specifically deleting Clause-4 and Clause-5 of the scheme as they originally stood. As stated above, Clause-4 was irrevocable with regard to option given to the employees and Clause-5 making such exercised options irrevocable. Only in the last paragraph of the Circular it has been stated as under :-

> "All other terms, conditions, provisions of the scheme and rules thereto, as well as instructions/decisions issued from time to time shall stand modified to the extent indicated above."

If the Clause regarding exercising option and making it irrevocable were required to be taken off from the scheme, specific amendment to that effect deleting those clauses ought to have been made in the Circular.

5. Apart from this, as stated above, the scheme is now being made compulsory on account of clause (i) of Memorandum of Understanding referred to above, where the petitioners were not party. It is also not known whether its Association has taken sense of the members who had already exercised their option against PRBS. No such averment has been raised in the affidavit-in-reply. If that be so, it was incumbent upon O.N.G.C. to first consult such employees and take their sense on this issue. That has not been done. It is, therefore, not proper for O.N.G.C. to bind even the employees who have already exercised their option against PRBS in the year, 1990. It is true, that the employees of the industrial establishments of the Government have to become member of any of such schemes. However, by virtue of the unamended scheme, option is available to the employees to either become member of PRBS or EPS, till such time that

question regarding grant of exemption is pending consideration with the appropriate authority. O.N.G.C. cannot retrospectively give effect to the scheme making it compulsory even for the employees who had exercised their option against PRBS. In view of the same, the action of the respondent - O.N.G.C. in making deductions from the salary of the petitioners contribution towards the PRBS and even recovery of additional amount on that count is not just, proper and legal. It is, however, required to be made clear that whatever the contribution that has already been recovered by the O.N.G.C., it will not be required to refund it to the petitioners but henceforth, it will not make any deductions from the salary of the petitioners towards PRBS, till such time their petition pending before the competent authority is decided. It is also made clear that in case, O.N.G.C. is granted exemption under Section 39, the petitioners will pay the arrears towards PRBS. However, till such time, the question is under consideration, option exercised by them in the year 1990 will continue to operate.

In view of the aforesaid, these petitions are, partly allowed. Rule is made absolute to the above extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

17th March, 2004.

At this juncture, before the judgment is signed, Mr. R.H. Mehta, learned advocate for the respondents has made a request that this judgment be stayed for a period upto 10th June, 2004. Mr. Bhairavia has objected to it. However, considering the facts and circumstances of the case, this judgment is stayed for a period of four weeks from today. It is also made clear that no further relief of this nature will be granted upon expiry of this period.

[AKSHAY H. MEHTA, J.]

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